**MICHEAL UR DAVID** A

**v.**

**HASHIM JAAFAR**

HIGH COURT MALAYA, JOHOR BAHRU B
VERNON ONG LAM KIAT JC
[CIVIL SUIT NO: (MT-1) 22-276-1994]
2 APRIL 2010

***TORT:*** *Defamation - Defences - Truth and justification - Whether established - Statements complained of proven to be substantially true in substance and fact - Defamation imputation justified* C

***TORT:*** *Defamation - Libel - Whether defendant's statement defamatory of plaintiff - Whether impugned words calculated to disparage plaintiff's business - Whether plaintiff lowered in estimation of right thinking members of society - Defences - Truth and justification, whether established by defendant* D

The plaintiff claimed against the defendant for damages arising from defamatory statements uttered by the defendant which were published in a newspaper. The plaintiff operated as an orchid "cut-flower" producer in Parit Sulong. The defendant was the ketua kampong. The statements complained of were published in an article captioned "Waspada skim tananam orkid" whereby the defendant had warned the residents to withdraw from an orchid planting scheme on the grounds that the orchids had no export or local market value. The plaintiff averred that although the words did not identify the plaintiff, the defendant referred to "Rancangan Niaga Tani" a scheme undertaken by the plaintiff. The defendant admitted to making the statements but contended that the statements were: (i) justified; (ii) made on an occasion of absolute or qualified privilege; and/or (iii) fair comment on a matter of public interest. E F G

**Held (dismissing the plaintiff's claim with costs):**

**(1)** To determine whether the words are defamatory, the court must construe the meaning of the words and then decide on whether the meaning is defamatory. Whether the words are defamatory is determined objectively. What the defendant intended his words to mean is not material. The words must be read in their proper context within the publication as a whole in determining their ordinary and natural meaning. (para 6) H I

**(2)** Considering the newspaper article as a whole, the impugned words were calculated to disparage the plaintiff's business because it casted doubt on the integrity of the plaintiff's scheme as a whole. Altogether the plaintiff's business was put in very bad light thereby lowering the plaintiff in the estimation of right-thinking members of society generally. The words complained of were defamatory of the plaintiff. (para 7)

**(3)** The evidence showed that the orchid plants supplied by the plaintiff to the participants were tainted with a virus which was so serious as to warrant the drastic measure of destroying all the orchid plants. The evidence on this fact was reliable and credible as it was founded on an independent analysis of the orchid plants. As the orchid plants were so afflicted, the plants could not have any export or local market potential. Therefore, on a balance of probabilities, the statements complained of were substantially true in substance and in fact. The defamation imputation was justified. (para 10)

**Case(s) referred to:**
*Allsop v. Church of England Newspaper Ltd [1972] 2 QB 161* ***(refd)***
*Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC* ***(refd)***
*DDSA Pharmaceuticals Ltd v. Times Newspapers Ltd [1973] 1 QB 21* ***(refd)***
*S & K Holdings Ltd v. Throgmorton Publications Ltd [1072] 1 WLR 1036* ***(refd)***
*Lewis v. Daily Telegraph Ltd [1964] 1 AC 234* ***(refd)***
*Ratus Mesra Sdn Bhd v. Sheikh Osman Majid & Ors [1999] 8 CLJ 499 HC* ***(refd)***

**Other source(s) referred to:**
*Gatley on Libel and Slander*, 9th edn, p 22

*For the plaintiff - M Ramachandran; M/s Nijar Kumar Netto & Partners*
*For the defendant - Badrul Hisham; M/s Azman Wan Helmi & Assocs*

*Reported by Amutha Suppayah*

## JUDGMENT

**Vernon Ong Lam Kiat JC:**

**[1]** The plaintiff's claim against the defendant is for damages arising from defamatory statements uttered by the defendant which were published in a newspaper in 1992.

## Brief Account Of The Facts

**[2]** The plaintiff is the sole-proprietor of Syarikat Ganesha Orchids which operates as an orchid "cut-flower" producer in Parit Sulong since 1989. The defendant is the ketua kampung Kawasan Seri Pengkalan, Mukim (1) Lubuk, 83600 Semerah, Batu Pahat, Johor Darul Takzim. The defendant is also the Yang DiPertua Persatuan Ketua Kampung Dareah Batu Pahat, Negeri Johor Darul Takzim.

**[3]** The statements complained of were published in an article captioned "waspada skim tananam orkid" in the Berita Minggu newspaper on 26 July 1992. Excerpts of the relevant statements are reproduced below:

> Sementara itu, Yang Di-pertua Persatuan Ketua Kampung Daerah Batu Pahat, Hashim Jaafar, menasihatkan penduduk yang menyertai skim itu supaya menarik diri sebelum mengalami kerugian besar.
>
> "Saya difahamkan oleh agensi kerajaan baka orkid yang dibekalkan mungkin tidak lagi mempunyai nilai eksport, malah pasaran tempatannya juga tidak terjamin," katanya.
>
> Hashim menasihatkan syarikat berkenaan menghentikan kegiatannya, di samping meminta ketua kampung dan ahli Jawatankuasa Kemajuan dan Keselamatan Kampung (JKKK) memberikan kerjasama kepada Pemuda UMNO untuk membanteraskan kegiatan itu.

## Defendant's Case

**[4]** The defendant admits to making the above statements. However, the defendant contends that the statements are complained of are (i) justified, (ii) made on an occasion of absolute or qualified privilege; and or (iii) fair comment on a matter of public interest.

## Issues To Be Determined

**[5]** At the conclusion of the trial the court invited counsel for the respective parties to submit on the following issues.

(a) Whether the statements complained of are defamatory of the plaintiff?

(b) Whether the defamatory imputation is justified?

(c) Whether they were made on an occasion of absolute or qualified privilege?

(d) Whether the statements were complained of are fair comment on a matter of public interest?

(e) Whether the statements complained of were actuated by malice?

*Whether The Statements Complained Of Are Defamatory Of The Plaintiff?*

**[6]** In order to determine whether the words are defamatory, the court first construes the meaning of the words, and then to decide on whether the meaning is defamatory. Whether the words are defamatory is determined objectively. What the defendant intended his words to mean is not material. The words must be read in their proper context within the publication as a whole in determining their ordinary and natural meaning. The meaning of the words is not confined to their literal meaning, but extends to any inference which can reasonably be drawn from them. There are numerous instances under which an imputation may be defamatory and these may include (i) any imputation which may tend to cause a person to be hated or despised; (ii) any imputation which renders a man ridiculous or which would cause others to shun or avoid him or to exclude him from the society of his fellow men; (iii) an imputation which tends to lower or adversely affect a person in the estimation of others (see *Gatley on Libel and Slander* 9th edn at p. 22). Where the words complained of bear only one literal meaning which is clear and explicit, it is unnecessary to plead any meaning in the statement of claim (*Allsop v. Church of England Newspaper Ltd* [1972] 2 QB 161; *Lewis v. Daily Telegraph Ltd* [1964] 1 AC 234 at 280). However where, the precise defamatory meaning of the words is not clear or explicit, the plaintiff must plead every indirect or inferential meaning which he claims the words bear and upon which he intends to rely on at the trial (*Allsop v. Church of England Newspaper, supra*; *S & K Holdings Ltd v. Throgmorton Publications Ltd* [1072] 1 WLR 1036; *DDSA Pharmaceuticals Ltd v. Times Newspapers Ltd* [1973] 1 QB 21).

**[7]** It is averred in the statement of claim that even though the words did not identify the plaintiff, the defendant referred to "Rancangan Niaga Tani" a scheme undertaken by the plaintiff. Unfortunately, there is nothing further in the statement of claim to say if the words only bear a literal meaning and if so, what that meaning is or whether the words bear an indirect or inferential meaning defamatory of the plaintiff. Be that as it may, the newspaper article read in its entirety pertains to an orchid planting scheme. It begins by advising residents of kampongs around Parit

Sulong to be cautious or alert of a company canvassing them to take part in an orchid planting scheme purportedly run in collaboration with a government agency. It also quoted the comments of one Rohaizad Ahmad the Setiausaha Biro Pertanian Pemuda UMNO Parit Sulong who said *inter alia* that "Pemuda UMNO bahagian telah memaklumkan kegiatan syarikat itu kepada ketua kampung dan imam di kampung sekitar Parit Sulong supaya mengingatkan anak buah mereka mengenainya. Saya difahamkan beberapa penduduk yang terpedaya telah membayar pendahuluan RM200 dan dibekalkan dengan pokok orkid yang didakwa mempunyai nilai eksport." In that context the defendant uttered the statements which were published in the Berita Minggu. Although the plaintiff is not referred to directly in the statements, the defendant has admitted that his statements refer to the plaintiff's orchid planting scheme. Do the statements bear any defamatory meaning arising from the facts or circumstances extrinsic to the words themselves and known to some or to all of those who read the words? The defendant contends that the impugned words only conveys to an ordinary reader that the scheme was risky and could have resulted in losses to the participants. The words did not have the tendency to lower the estimation of the plaintiff in the minds of right thinking members of society (*Ratus Mesra Sdn Bhd v. Sheikh Osman Majid & Ors* [1999] 8 CLJ 499). Further, the plaintiff did not give any meaning or innuendo as to how the impugned words had injured or disparaged him personally or his trade or profession (*Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321). After considering the newspaper article as a whole the court finds that the impugned words were calculated to disparage the plaintiff's business because it casts doubt on the integrity of the plaintiff's scheme as a whole; further the participants were also advised to withdraw from the scheme and the plaintiff advised to stop its activities. Altogether the plaintiff's business was put in a very bad light thereby lowering the plaintiff in the estimation of right-thinking members of society generally. In the premises the court finds that the words complained of are defamatory of the plaintiff.

*Whether The Defamatory Imputation Is Justified?*

**[8]** It is a complete defence if the defendant can establish that the defamatory words are true in substance and in fact. However, as a defamatory statement is presumed to be false, the defendant must plead and prove that it is substantially true on a balance of

probabilities. The defence must be specifically pleaded with full particulars of all the facts and matters relied on. Further, the defendant must state clearly the meaning that he seeks to justify.

**[9]** In this regard it is incumbent upon the defendant to show that his statements that the orchid plants supplied by the plaintiff do not have any export value or local market potential are true in substance and in fact. In his evidence the defendant testified that in his capacity as the Ketua Kampung he received many complaints from the participants against the scheme. The participants also formed a committee ("the committee") to highlight their problems with the scheme and the committee wrote a letter of complaint dated 30 September 1992 to the plaintiff. The defendant also said that in early 1992 one Ayub bin Jamil an officer with FAMA informed him that the orchid plants might be diseased and has no export quality or local demand. He was also informed by Tuan Haji Mohd Yusof bin Haji Md Salleh ('Yusof') the chairman of the Biro Pertanian UMNO Bahagian Parit Sulong ("the biro Pertanian") of the problems. Yusof also supplied the defendant with a copy of letter from the Agriculture Ministry dated 26 January 1993. At the material time Rohaizad Bin Ahmad (DW2) was the secretary of the Biro Pertanian. DW2 said that he received a letter of complaint dated 13 October 1992 from the committee addressed to the Biro Pertanian. The Biro Pertanian then referred the matter to the Agriculture Ministry. DW2 was present when the samples were collected from the participants by officers from the Agriculture Ministry for analysis. DW2 subsequently received the said letter dated 26 January 1993 from the Agriculture Ministry which stated that according to the tests conducted all the sample orchid plants were afflicted with Cymbidium Mosaic virus. As a result they recommended that all the orchid plants supplied by the plaintiff be destroyed through burning to prevent the spread of the virus.

**[10]** On the totality of the evidence adduced by the defendant the court finds that the orchid plants supplied by the plaintiff to the participants were tainted with the virus which was so serious as to warrant the drastic measure of destroying all the orchid plants. The evidence on this fact is reliable and credible as it is founded on an independent analysis of the orchid plants. As the orchid plants were so afflicted, then it must follow that the orchid plants could not and would not have any export potential nor any local market potential as no reasonable party would buy a diseased orchid plant.

On a balance of probabilities the court finds that in the natural and ordinary meaning contended for by the plaintiff the statements complained of are substantially true in substance and in fact. Having found that the defamation imputation is just justified, the court will not be touching on the remaining issues.

**[11]** For the foregoing reasons the plaintiff's claim is dismissed with costs.